



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Turbo Mechanical Inc.

File: B-232483

Date: January 9, 1989

DIGEST

1. Protest of the rejection of a bid as late is untimely when filed more than 10 days after basis of the protest is known.
2. A protest concerning the type of contract to be awarded and alleged ambiguities in the specifications must be filed prior to bid opening to be timely.
3. A bidder that submits a late bid is not prejudiced by information that it alone received which allegedly caused it to bid higher than other bidders where its bid is not available for consideration for award because it is received late.

DECISION

Turbo Mechanical Inc. (TMI) protests the award of a contract under invitation for bids (IFB) No. F65503-88-B-0026 issued by Eielson Air Force Base, Alaska for the repair of a turbine.

We dismiss the protest.

The Air Force issued the IFB on June 1, 1988, with bid opening scheduled for July 1 and later changed to July 8. In a letter to the Air Force dated June 27 TMI requested clarification of the specifications in the IFB; on July 1 TMI sent another letter requesting clarification of the specifications in amendment No. 0002. Apparently as a result of TMI's second letter, the Air Force postponed bid opening indefinitely, and subsequently revised the specifications. Amendment Nos. 0005 and 0006 were then issued, incorporating new specifications and establishing August 5 as the bid opening date.

On July 26, TMI wrote to the Air Force for clarification of the new specifications. The contracting officer received

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this letter on August 1 and responded over the telephone to TMI on August 3. The protester confirmed his understanding of the conversation in a letter to the Air Force the same day.

The Air Force received eight bids on August 5, the scheduled opening date. On August 9, TMI's bid was received by the contracting office. By letter dated August 9, the Air Force informed TMI that its bid had been received after the time for bid opening and requested proof of timely mailing. On August 11, TMI protested to the agency that the specifications in the IFB were inadequate, and that the contracting officer had provided TMI with information affecting bid pricing that was not given to other bidders. No mention was made in the letter of the late delivery of TMI's bid.

On August 19, the agency denied TMI's protest, stating that the specifications clearly described the government's requirements, and that the information provided to TMI in response to TMI's requests was not prejudicial to other bidders. The denial also informed TMI that its bid had not been considered for award because it had been received late.

TMI protested to our Office on September 2, 1988. TMI first argues that the Air Force improperly rejected its bid as late, contending that the late receipt was due to government mishandling. TMI also asserts that the Air Force selected a type of contract that is contrary to policies stated in the Federal Acquisition Regulation. TMI believes the contract, which is a firm-fixed-price contract, should have been a time-and-materials contract. TMI also argues that the Air Force purposely made the specifications ambiguous, and then provided only TMI with clarifying data which caused TMI to submit a higher bid.

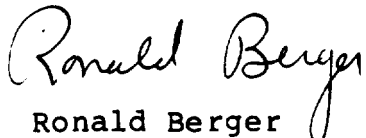
The protest of the rejection of TMI's bid as late is untimely. The Air Force notified TMI by letter dated August 9, 1988, that the bid had been received after the August 5 bid opening date and requested that TMI furnish documentation of timely mailing, which the record indicates was not furnished. Although TMI protested other issues to the Air Force on August 11, it did not protest the Air Force's rejection of its bid as late until it protested to our Office on September 2, claiming government mishandling after the receipt of its bid at the government installation. While the Air Force did not formally reject the bid until August 19, under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1988), a protest must be filed within 10 working days of the date the protester knew or should have known of the basis for its protest. TMI knew the Air Force considered its bid late when it received the agency's

August 9 letter. Since TMI did not protest this issue until September 2, its protest on that issue is untimely and not for our consideration.

Other issues protested--the type of contract and the alleged ambiguous specifications--are also untimely, since they concern alleged improprieties in the solicitation which were apparent prior to bid opening. Under 4 C.F.R. § 21.2(a)(1) such a protest must be filed either with the agency or with this Office prior to the time set for bid opening, which plainly did not happen here.

Finally, the fact that TMI may have bid higher than other bidders because of clarifying information that it alone allegedly received from the agency was not prejudicial since its bid cannot be considered in any event because it was late. We note, however, that the clarifying data received relates to who would be required to furnish certain parts and materials required for the refurbishment of the turbine generator--the government or the contractor. The record indicates that TMI was told that the contractor would be required to furnish all parts and labor, precisely as indicated in the solicitation, which requires the contractor to provide "all plant, labor, material and work necessary" to complete the job. With the exception of the turbine rotor wheels (which the government would provide), all other parts were plainly required to be furnished by the contractor. The alleged clarifying information, then, provided no more information than was plainly set out in the solicitation.

The protest is dismissed.



Ronald Berger
Associate General Counsel